

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	MM Docket No. 00-39
Review of the Commission's)	
Rules and Policies Affecting the)	
Conversion to Digital Television)	
To: The Commission		

REPLY COMMENTS
OF THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.

June 16, 2000

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The Association for Maximum Service Television, Inc.¹ ("MSTV") files these reply comments regarding the Commission's Notice of Proposed Rule Making on Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (the "Notice").² In the initial round of comments in this proceeding, MSTV participated as signatory to the Joint Broadcasters' Comments.

I. INTRODUCTION AND SUMMARY

As the comments in this proceeding make clear, there are several critical DTV implementation steps the Commission has delayed taking and must take now if DTV is to have a chance of success. These include the establishment of DTV application processing procedures,

¹ MSTV represents nearly 400 local television stations on technical issues relating to analog and digital television services. It worked closely with the Commission in developing the methodology for allotting and assigning digital television channels.

² See Notice of Proposed Rule Making, *In re Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39 (adopted March 6, 2000; rel. March 8, 2000).

the facilitation of tower siting and building, the establishment of DTV receiver performance thresholds, and the adoption of digital cable inter-operability standards and digital cable carriage rules. It has long been clear, in some cases for more than a decade, that Commission action would be necessary in these areas, but the Commission has delayed in taking action for reasons of principle and reasons of neglect. Delay is no longer an option in the face of the urgent need for both industry and government stewardship in making DTV work.

At the same time, the comments make clear that the Commission should not rush prematurely to adopt new rules where there is no evidence that the existing requirements are failing. The Commission should not impose new replication and principal community coverage requirements when doing so is unnecessary at this stage of the transition and would impose substantial burdens on broadcasters that are in the midst of building facilities according to existing FCC rules. The Commission also should not advance the channel election date and procedures. Broadcasters have not had enough experience with DTV performance to make rational choices. There is much to be learned about DTV transmission and reception and DTV-to-DTV interference.³ While data on these issues are being developed, the Commission should first do no harm.

³ See, e.g., *Comments of the Association of America's Public Television Stations and the Public Broadcasting Service* at 10-11 (May 17, 2000) ("APTS/PBS Comments").

II. THE COMMISSION SHOULD REMOVE OBSTACLES TO BROADCASTERS' RAPID DTV BUILD-OUT.

A. The Commission Should Quickly Adopt Reasonable Processing Rules.

As Broadcasters showed in their initial comments, the Commission now faces a large pool of potentially mutually exclusive ("MX") DTV applications.⁴ In processing DTV applications and resolving mutual exclusivities, the Commission must avoid the paralysis of delaying action and the recklessness of granting all applications regardless of interference. Broadcasters presented a processing proposal that (1) sets a cut-off date to establish a finite pool of applications, (2) identifies and grants non-MX applications, (3) identifies MX applications and provides a period for mediation or negotiation, and (4) dismisses MX applications that are not amended to comply with the rules and/or to include interference agreements.⁵ Given that more than 1,200 DTV applications of all types were on file even before the May 1 application deadline, the Broadcasters' proposal is the only one that is workable, fair, and efficiently places the burden on MX applicants to resolve the problems within a limited window of time.

By contrast, the first come/first served proposals suggested by a few commenters⁶ are unworkable, unfair, and inefficient. First come/first served processing would be unworkable because many DTV applications and modifications of applications were filed in batches on deadline dates. Also because of the staggered deadlines set by Congress and the Commission, first come/first served processing would be unfair, penalizing smaller market and noncommercial stations that reasonably waited for their later deadlines to file their applications. Finally, first

⁴ See *Joint Broadcasters Comments* at 10-11 (May 17, 2000) ("Joint Broadcasters Comments").

⁵ See *id.*, Attachment A.

⁶ See *Comments of Fox Television Stations, Inc. and Fox Broadcasting Co.* at 6-12 (May 17, 2000) ("Fox Comments"); *Comments of KM Communications, Inc.* at 7-8 (May 17, 2000) ("KM Comments").

come/first served processing would be inefficient because it fails to promote compromises that could allow multiple stations to expand their service to viewers. The applicant that filed first, to the extent that this could be determined, would have little incentive to work out a reasonable compromise with a neighboring station because it could assume the Commission's favor.

B. The Commission Should Take A More Active Role In Helping Resolve Broadcasters' Problems In Siting And Building Towers.

The NAB survey of commercial television stations indicates that many broadcasters face regulatory problems in siting and building DTV towers.⁷ More than one-sixth of the broadcasters responding to NAB's survey have experienced local zoning and other approval problems.⁸ Unresolved local zoning and government problems have prevented DTV stations from going on-air.⁹ Also, stations have experienced delays in obtaining final frequency approval from Canada and tower height approval from the FAA.¹⁰ MSTV appreciates the efforts of Commissioner Susan Ness's DTV Strike Force. However, we think that more intensive and consistent Commission involvement is necessary to explain to local governmental entities the federal policy at stake in a rapid DTV transition.¹¹ As broadcasters strive to meet deadlines and specifications imposed by Congress and the Commission, the Commission should take a more active role in helping to resolve problems that delay the siting and building of towers.

⁷ See *Comments of the National Association of Broadcasters* at 4-10 (May 17, 2000) ("NAB Comments").

⁸ See *id.* at 6; see also APTS/PBS Comments at 27-29 (describing tower siting problems of APTS and PBS members).

⁹ See NAB Comments at 7.

¹⁰ See *id.*

¹¹ See *id.* ("[I]t is clear that there exists a great need for Commission leadership in 'facilitating the deliberations of reviewing entities.'" (footnote omitted)); see also APTS/PBS Comments at 29 ("Where mediation does not work, Public Television urges the Commission to take more aggressive steps and preempt unreasonable local governmental decisions or failure to act.").

III. THE COMMISSION, ACTING ON CLEAR AUTHORITY, SHOULD SET RECEIVER PERFORMANCE THRESHOLDS.

A. The Commission's Authority Is Clear And Has Several Sources.

Broadcasters described in their comments how the All Channel Receiver Act ("ACRA") authorizes the Commission to establish mandatory receiver performance thresholds so that consumers can be confident that the DTV receivers they purchase will be able to display a consistent picture from over-the-air signals.¹² The arguments put forth by the Consumers Electronics Association ("CEA") and other manufacturers, contesting the Commission's authority in this respect, are unavailing.¹³ CEA contends that ACRA was narrowly limited to UHF signals.¹⁴ But the Act's plain language belies such a narrow construction. ACRA authorizes the Commission to require that all television receivers "be capable of adequately receiving *all frequencies allocated by the Commission* to television broadcasting."¹⁵ According to the plain meaning of the Act, the Commission is authorized to ensure that all frequencies are adequately received, whether they are UHF or VHF frequencies and whether they carry analog

¹² See Joint Broadcasters Comments at 23-24; *see also* APTS/PBS Comments at 15; NAB Comments at 16.

¹³ See *Comments of the Consumer Electronics Association* at 13-14 (May 17, 2000) ("CEA Comments"); *Comments of Philips Electronics North America Corp.* at 15 (May 17, 2000) ("Philips Comments"); *Comments of Thomson Consumer Electronics, Inc.* at 16-17 (May 17, 2000) ("Thomson Comments").

¹⁴ See CEA Comments at 13. CEA and other manufacturers point out that the Commission already has concluded that ACRA "does not mandate the manufacture of dual-mode [analog and digital] receivers." See CEA Comments at 14-15 (citing Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making, MM Docket No. 87-268, 7 FCC Rcd. 6924, 6984 (1992); Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry, MM Docket No. 87-268, 10 FCC Rcd. 10540, 10552 (1995)); *see also* Philips Comments at 17; Thomson Comments at 19. We are not asking for dual-mode receivers. We ask only that the Commission help ensure that as broadcasters fulfill statutory and FCC mandates to transmit DTV signals, the public will be able to purchase sets capable of adequate reception.

¹⁵ 47 U.S.C. § 303(s) (emphasis added).

or digital signals. When the meaning of a statute is plain on its face, as with ACRA, there is no need to resort to its legislative history.¹⁶

But even delving into ACRA's legislative history, one finds strong parallels between the problem Congress was addressing with the launch of UHF broadcasting and the problems plaguing the launch of DTV broadcasting (which, incidentally, is largely over UHF channels). UHF spectrum was available but going unused because too few television receivers could pick up UHF signals.¹⁷ Congress sought to break the "vicious cycle" of the "refusal by the public to buy UHF sets until there [were] UHF stations offering attractive programs, and the inability of UHF broadcasters to provide good programming in the absence of an audience which will attract advertisers and networks."¹⁸ At the time, the Commission believed that the "root cause" of the problem was the lack of television receivers capable of receiving UHF signals.¹⁹ In 2000, we confront the same problems in making the transition to DTV over the same frequencies and there is the same danger that spectrum will not be used efficiently. The answer to the problems is also the same: ensure through regulation that the public can purchase receivers capable of adequately receiving DTV signals.²⁰

¹⁶ See, e.g., *TVA v. Hill*, 437 U.S. 153 (1978) ("When confronted with a statute which is plain and unambiguous on its face, we ordinarily do not look to legislative history as a guide to its meaning.").

¹⁷ See S. Rep. No. 1526, 87th Cong., 2d Sess. 2 (1962), *reprinted in* 1962 U.S.C.C.A.N. 1873, 1874.

¹⁸ See *id.* at 4, *reprinted in* 1962 U.S.C.C.A.N. 1876.

¹⁹ See *id.*

²⁰ See *Comments of the Association of Local Television Stations* at 6 (May 17, 2000) (stating that if the Commission fails to act, "it could take years before an acceptable receiver is offered on the market") ("ALTV Comments"); APTS/PBS Comments at 16 ("Greater consumer confidence will likely spur the sale of receivers, which will dramatically improve DTV set penetration rates and accelerate the transition."); NAB Comments at 16 ("Congress' reasoning and solution in the UHF situation apply with equal if not more force to DTV."); *Comments of California Oregon Broadcasting, Inc.* at 3 (May 17, (footnote cont'd))

It also is important that ACRA requires receivers to be capable of "*adequately* receiving all frequencies."²¹ The House Committee on Interstate and Foreign Commerce stressed that reception must be meaningful reception:

The committee desires to make it very clear . . . that by "all-channel television sets" we mean television receiving sets capable of *effectively* receiving all channels. Any set which is not capable of performing as contemplated by this legislation and this report should be regarded as a fraud on the public.²²

The Senate Commerce Committee added "adequately" to the statute's language to "remove all doubt" that the Commission had the necessary authority to assure meaningful and effective reception.²³ Then, following ACRA's passage, the Commission promulgated noise figure and peak picture sensitivity standards for UHF channels to ensure that not only would receivers "tune in" UHF signals, but also that receiver performance characteristics would not be inferior.²⁴ As with UHF receivers, ACRA clearly grants the Commission sufficient authority to ensure that DTV receivers provide for meaningful reception.

Additional support for the Commission's authority to establish receiver performance thresholds may be found in 47 U.S.C. § 302a(a), which authorizes the Commission

(footnote cont'd)

2000) ("If [manufacturers'] receivers do not perform adequately or at all, we will lose [viewers] to other services.") ("COBi Comments").

²¹ 47 U.S.C. § 303(s) (emphasis added).

²² H. Rep. No. 1559, 87th Cong., 2d Sess. 6 (1962) (emphasis added). The committee stated that it expected that all receivers "will have performance characteristics sufficient to permit satisfactory and usable reception of each of the present 12 VHF and 70 UHF channels in any location where, in the light of the normal state of receiver development at the time, such reception can be expected." *Id.* at 5.

²³ See S. Rep. No. 1526 at 8, 20-22 *reprinted in* 1962 U.S.C.C.A.N. 1880, 1892-94.

²⁴ See *id.*; Notice of Proposed Rule Making, *All-Channel Television Broadcast Receivers*, Docket No. 14769, 27 Fed. Reg. 9222 (1962); Report and Order, *All-Channel Television Broadcast Receivers*, Docket No. 14769, 27 Fed. Reg. 11698 (1962).

to establish "minimum performance standards for home electronic equipment and systems to reduce their susceptibility to interference from radio frequency energy."²⁵ In adding this section to the Communications Act in 1982, Congress recognized that destructive interference to television service could be most dramatically and efficiently reduced at the receiving end, but it also found that manufacturers would not voluntarily incorporate interference cures.²⁶ Thus, Congress gave "the FCC authority to require that receivers and other electronic devices be so designed and constructed as to meet minimum standards set by the FCC for rejection of unwanted radio signals and energy."²⁷ Clearly, this authority extends to setting receiver performance thresholds for rejection of adjacent channel/taboo channel RF interference. As Congress stated, "[t]he millions of purchasers of television and radio receivers and other electronic devices deserve protection from interference."²⁸

The stakes are much higher, in terms of spectrum utilization and free and universal service, during the DTV transition than they were either in 1962 or in 1982. Congress has granted the Commission authority. Now, the Commission should use its authority to ensure adequate reception of television signals in the digital environment.

²⁵ 47 U.S.C. § 302a(a).

²⁶ See Communications Amendments Act of 1982, Pub. L. No. 97-259, 96 Stat. 1087, S. Rep. No. 97-191, 97th Cong., 2d Sess. 7-8 (1982), *reprinted in* 1982 U.S.C.C.A.N. 2237, 2243-44; *see also* H.R. Conf. Rep. No. 97-765, 97th Cong., 2d Sess. 21 (1982), *reprinted in* 1982 U.S.C.C.A.N. 2261, 2265; Broadcaster Comments on the Fifth Notice of Proposed Rulemaking, MM Docket No. 87-268, at 32-33 (Jul. 11, 1996).

²⁷ S. Rep. No. 97-191 at 8, *reprinted in* 1982 U.S.C.C.A.N. 2244.

²⁸ *Id.*

B. Market Forces Are Not Leading To The Production Of Acceptable DTV Receivers.

If, as CEA and other manufacturers contend, market forces will lead to timely and widespread availability of adequate receivers,²⁹ then, at this stage of the DTV transition, the public should have at least a reasonable selection of modestly-priced DTV receivers capable of over-the-air reception. However, this is not the case. In its comments, CEA describes a selection of 118 high definition DTV *monitors*, but CEA can find only 28 HDTV sets that actually receive over-the-air DTV signals.³⁰ Of those sets that are capable of over-the-air DTV reception, their performance has proved inadequate.³¹ Furthermore, the lists of available equipment reveal that prices still put the equipment far beyond the reach of most consumers.³² The current problems of paltry selection, poor performance, and high prices of sets capable of over the air reception can be overcome, but not by letting the "market" dictate events.

Time to market for new DTV products is between 18 months and two years³³ – not exactly the "Internet speed" at which manufacturers claim they operate.³⁴ If the Commission continues to rely solely on the market, the public will have to endure years of delay and

²⁹ See CEA Comments at 14-15; Philips Comments at 16-17; Thomson Comments at 18-19.

³⁰ See CEA Comments at 6.

³¹ See Joint Broadcasters Comments at 23; NAB Comments at 14 & n.38; ALTV Comments at 4-5.

³² See CEA Comments, Appendices A, B, C & D. No over-the-air capable receiver is available for less than \$3,000, and the cost of some exceeds \$10,000. See *id.*, Appendix C.

³³ See Report and Order, *Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, CS Docket No. 97-80, 13 FCC Rcd 14775, 14808 (1998) ("We note that an 18-24 month development and production cycle is typically cited as necessary for significant changes to be incorporated into the manufacture of television receivers and other similar consumer electronic devices."). Even after CEA and NCTA recently reached agreement on set labeling, "CEA said first digital TVs bearing new labels should hit stores by fall 2001." *Communications Daily*, May 25, 2000, at 3. That is nearly a year and a half just to provide newly labeled sets.

³⁴ See CEA Comments at 13.

uncertainty while equipment manufacturers move through several multi-year iterations. The Commission should require receiver performance thresholds now, even though the public will have to wait for the next generation of sets to meet those thresholds. At least, the market then could move forward on the basis of the certain availability of adequate receivers after one development period.

C. The Commission Should Set Receiver Performance Thresholds.

NAB's comments asked the crucial question: "How does it make sense to define and require specific DTV transmission parameters, based on technical assumptions about receiver performance, but not to similarly require that receivers be built to meet and match those assumed performance levels, and still expect to achieve the intended DTV coverage and service goals?"³⁵ The short answer is that it does not. As Broadcasters stated, the coverage and interference figures in the DTV Table assume that receivers are performing at certain minimal levels with respect to receiver noise figures, carrier-to-noise ratios, and adjacent channel/taboo channel D/U ratios.³⁶ The Commission should now mandate that receivers perform up to the interference levels assumed in the DTV Table. Receivers also have performed poorly in acquiring signals in multipath-rich environments and other challenging RF conditions.³⁷ Thus, the Commission also should mandate that receivers be able to perform up to industry-recommended performance thresholds under real-world multipath conditions.³⁸ NAB has proposed that the Commission further require that a certain category of receivers be equipped

³⁵ NAB Comments at 14.

³⁶ See Joint Broadcasters Comments at 22.

³⁷ *Id.* at 23.

³⁸ See *id.* at 22 (explaining broadcaster-initiated testing program).

with DTV tuners so that consumers are capable of receiving over-the-air signals.³⁹ MSTV supports this proposal.

It does appear that most DTV receivers are able to adequately collect and collate Program and System Information Protocol ("PSIP") information. However, this receiver capability is only available if PSIP information is transmitted. "The presence of PSIP information in the transmittal signal is essential to the operation of consumer receivers to navigate to and access each of the program channels within each broadcast Transport Stream."⁴⁰ The Advanced Television Systems Committee ("ATSC") urges the Commission to incorporate the ATSC PSIP Standard A65 into its rules,⁴¹ and we agree.

IV. THE COMMISSION MUST IMPLEMENT DTV CARRIAGE RULES AND SHOULD PRESS HARDER ON INTER-OPERABILITY STANDARDS.

Although the Commission stated that digital cable carriage issues, which are the subject of their own proceeding,⁴² are outside the scope of this proceeding and although the Commission initiated a proceeding to consider cable compatibility issues,⁴³ these issues are too important for MSTV and the Commission to ignore here. We have made the argument now countless times that the Commission has a statutory mandate and policy imperative to adopt

³⁹ See NAB Comments at 15.

⁴⁰ *Comments of the Advanced Television Systems Committee* at 7 (May 17, 2000) ("ATSC Comments").

⁴¹ See *id.*

⁴² See Notice at ¶ 14 (citing Notice of Proposed Rule Making, CS Docket No. 98-120, 13 FCC Rcd. 15092 (1998)).

⁴³ See Notice of Proposed Rule Making, PP Docket No. 00-67 (rel. April 14, 2000) ("Cable Compatibility Proceeding").

digital cable carriage rules.⁴⁴ While the Commission approves cable industry mergers, allowing for greater and greater control over programming to be vested in a very few companies, it should also ensure that consumers can access all video and related services over cable on a non-discriminatory, transparent, and competitive basis. With respect to cable subscribers, this means that consumers should be able to (1) access video programming not owned by or affiliated with the cable operator, (2) access competing video services seamlessly through equipment that is consumer-friendly and meets consumer expectations, and (3) use an array of equipment that is competitively provided. Congress has enacted a number of laws directing the Commission to fulfill this stewardship function, including the must-carry provisions, the program access provisions, the cable compatibility provisions, and the navigation device provisions. The Commission has not, to date, come through for the consumer in the digital environment. It is time for the Commission to act.

The Commission must adopt rules in its DTV carriage proceeding to "ensure that all consumers can access DTV broadcasts and thus ... have an incentive to participate in the DTV transition, rather than a *disincentive* to do so."⁴⁵ The purpose of the Cable Television

⁴⁴ See, e.g., *Ex Parte* Notification, Ellen P. Goodman on behalf of MSTV, CS Docket No. 98-120 (March 29, 2000); Letter from Margita E. White, MSTV, Edward O. Fritts, NAB, and James B. Hedlund, ALTV to Chairman Kennard, CS Docket No. 98-120 (Feb. 22, 2000) ("MSTV/NAB/ALTV Feb. 22, 2000 Letter"); Letter from Margita E. White to Chairman Kennard CS Docket No. 98-120 (Nov. 9, 1999) ("MSTV Nov. 9, 1999 Letter"); Report on DTV Implementation of MSTV, CS Docket No. 98-120 (Oct. 1999); *Reply Comments of MSTV*, CS Docket No. 98-120 (Dec. 22, 1998); *Comments of MSTV*, CS Docket No. 98-120 (Oct. 13, 1998).

⁴⁵ NAB Comments at 13; see *Comments of Belo* at 4 (May 17, 2000) ("Belo Comments"). Belo stated: The Commission long since missed its end-of-1999 target for issuing a decision. Meanwhile, only a handful of broadcasters have been able to obtain cable carriage for their DTV signals; most cable operators are unwilling to consider carriage in the absence of a Commission decision on the issue. *Id.*

Consumer Protection and Competition Act of 1992⁴⁶ – to preserve the public's free over-the-air television service and to preclude cable operators from acting as anticompetitive gatekeepers – is as applicable in the DTV context as it is in the analog context.⁴⁷ If anything, the DTV transition provides even greater justification for carriage rules. The entire transition will be speeded once cable viewers are assured that their DTV choices will not be diminished and once broadcasters are assured of an audience for their DTV signals.⁴⁸ The Commission must now provide these assurances by adopting digital carriage rules – not just must-carry, but the basic rules of the road such as non-discrimination in channel placement and display, non-degradation of signal quality, and network exclusivity protection.

We have heard the Commission's answers to this plea: (1) it needs more information on broadcaster business plans and/or (2) market negotiations between a single or small group broadcaster and a cable conglomerate should ensure that the public has unfettered access to DTV signals through cable. The principle that cable ought not to exercise gatekeeping power to keep off, degrade, or otherwise discriminate against broadcast signals has nothing to do with the content on those signals. Even if the Commission were to assume that broadcasters do nothing but upgrade their analog programming to digital – an assumption not borne out by recent broadcaster announcements of multicast and other digital services – it would be obligated to ensure that consumers could access that programming, easily, seamlessly, and fully, along with digital cable services. As to market forces absolving the Commission of any regulatory

⁴⁶ Pub. L. No. 102-385, 106 Stat. 1460, *codified at* 47 U.S. C. § 521, *et seq.*

⁴⁷ *See Broadcasters' Comments on the Fourth Notice of Proposed Rulemaking*, MM Docket No. 87-268, at 32-34 (Nov. 20, 1995).

⁴⁸ *See id.* at 33-34.

responsibility, it is a dream. After two and a half years, virtually the only digital cable carriage deals to have been announced are those between the networks and the cable operators.⁴⁹ There is now significant record evidence that stations not owned by a network have been turned away by the cable industry and cannot negotiate satisfactory carriage arrangements.⁵⁰ Further Commission delay simply is without rational basis.

As in the cable carriage arena, the Commission has put its faith in the market and private industry negotiations when it comes to digital cable inter-operability. And what has this faith yielded? It has yielded victorious announcements that close at hand are DTV sets that will connect to digital cable, cable systems that will transmit digital programming in ways that sets can decode and properly display, consumer information about what sets can and cannot do, and DTV devices that can interconnect with each other and withstand early obsolescence. And then, in the wake of such announcements, the Commission has been presented with recanting, second thoughts, and delay. As we have been urging for years, the Commission should rely less on the promises of consumer electronics manufacturers and the cable industry to reach agreements and should focus more on establishing firm deadlines for the *implementation* of standards for compatibility between cable systems and consumer equipment.⁵¹ These deadlines should be backed up by the credible threat of regulation.

⁴⁹ See MSTV/NAB/ALTV Feb. 22, 2000 Letter at 1 & Attachment at 1.

⁵⁰ See, e.g., *Supplemental Comments of Meredith Corp.*, CS Docket No. 98-120 (Dec. 10, 1999); MSTV Nov. 9, 1999 Letter at 2 (stating that Hearst-Argyle, Tribune Broadcasting, Gannett Television, and LIN Television Corp., among others, "have been unable to negotiate DTV cable carriage agreements with local cable companies. Even with respect to DTV signals currently on the air, the answer to our inquiries has been an unequivocal 'No way.'").

⁵¹ See Joint Broadcasters Comments at 29-30; NAB Comments at 12; Belo Comments at 4.

Beginning in 1998, the Commission urged the cable and equipment manufacturing communities to agree to inter-operability standards that would ensure the seamless passage of digital cable and broadcast signals from the cable system to the consumer's television set. In 1999, it first welcomed apparent agreement on 1394 interface specifications and then on RF signal formats. Most recently, the Commission welcomed an agreement on DTV receiver labeling. MSTV has, throughout this process, urged the Commission to take both a broader view of what needed to be done to ensure true inter-operability and consumer faith in digital functionality (including ensuring that there are cable ready sets that can connect to cable without a cable-controlled set-top box intermediary) and a more proactive role. But even if one focuses on the narrow issues the Commission identified and on the voluntary agreements it hailed as solutions, one sees that little has been accomplished in two years.

- There is still no 1394 product, and Sony – the greatest 1394 advocate – recently announced that its 1394-equipped receivers will be delayed.⁵² This is not terribly surprising, as there is still not full agreement on all the 1394 specifications.
- The much-heralded DTV receiver labeling agreement, which, in any case, did not address such issues as DTV signal reception, is now unraveling or is at least subject to vastly differing interpretations by its signatories. The equipment manufacturers believe that the agreement was a mere beginning and not binding⁵³ while the cable industry believes that the agreement finally resolves the issue of DTV set labeling.⁵⁴

⁵² Evan Ramstad, "Software Problems Delay Delivery of Sony's Digital HDTVs to U.S.," *Wall Street Journal* (June 8, 2000)

⁵³ See, e.g., *Reply Comments of CEA*, PP Docket No. 00-67 (June 8, 2000) at 4 (stressing that labeling agreement was only "an initial step . . . in what will be a continuing process that will seek to define the labeling of new products and services as standards are established"); see also *Reply Comments of Circuit City*, PP Docket No. 00-67 (June 8, 2000) (stating that labeling agreement is not in consumers' interest because labels agreed to are confusing and misleading).

⁵⁴ See, e.g., Letter from Robert Sachs, NCTA, to Chairman Kennard, PP Docket No. 00-67 (June 13, 2000) (describing "binding nature" of labeling agreement).

- As Circuit City forcefully comments, the cable industry is either delaying or reneging on its obligation to produce open specifications for interactive digital services, such that fully-functional consumer equipment can be developed and sold in a competitive market. Having failed to get out from under the Commission's navigation device rules in the courts, the cable industry appears to be frustrating those rules by reserving to itself technological advantages that it will deny to competitors.⁵⁵ Under these conditions, cable will be able to control access to and transmission of the digital programming of broadcasters and other entities not affiliated with cable. Moreover, cable will continue to control the functionality of consumer equipment.

The sorry state of digital inter-operability and the impending delay in the availability of competitive navigation devices suggest that there must be more than agreements to agree. There must be action. Given the varied and often conflicting interests of consumer electronics manufacturers, cable companies, and the content industry, private solutions will come slowly and may well not be in the public interest. When the three industries do not all have incentives to move quickly, and some, in fact, may benefit from delay, certainly the DTV transition will be slowed further by waiting for agreement and implementation. To protect consumers and to correct a clear market failure, after having provided more than adequate time for the parties to achieve consensus, it is clear that the Commission should step in to resolve the cable compatibility issues and establish deadlines for timely production of cable-ready DTV receivers.

⁵⁵ See *Reply Comments of Circuit City*, PP Docket No. 00-67 at 2 (June 8, 2000) ("It seems amazing that Time Warner Cable, one of the largest MSO's, and the NCTA, which speaks for CableLabs, could make entire filings on the subjects of Open Cable and interactivity, and never once refer to the fact that there is supposed to be a bidirectional, interactive OpenCable specification.")

V. THE COMMISSION SHOULD NOT ERECT HURDLES FOR DTV LICENSEES.

A. New Replication Requirements And Principal Community Coverage Requirements Are Unwarranted.

The preceding four sections describe areas in which the Commission should act and, frankly, should have acted long ago. But most of the proposals in the Notice do not deal with these existing problems. Instead, the Notice focuses on issues that may or may not be problems and proposes requirements that would, in many cases, force broadcasters to tear down for no good reason much of the build-out that they already have accomplished.

A majority of commenters that addressed the subject agree that the Commission's proposals to impose new replication and principal community coverage requirements are unwise.⁵⁶ Particularly, now that the Commission has encouraged broadcasters to develop common tower sites and has granted broadcasters some flexibility to adjust allotment parameters and site locations, it should not begin to hamper stations with new and contradictory requirements. "The Commission's proposed requirements would severely curtail where licensees could locate their transmitters and would force many broadcasters who have already secured a transmitter site to find another location."⁵⁷ New requirements that would necessitate redesigning DTV facilities would be particularly onerous in light of the zoning and regulatory tower siting

⁵⁶ See, e.g., APTS/PBS Comments at 8-11; COBi Comments at 2; *Comments of Freedom Communications, Inc.* at 3-6 (May 17, 2000) ("Freedom Comments"); *Comments of Hubbard Broadcasting, Inc.* at 2-5 (May 17, 2000) ("Hubbard Comments"); *Comments of the Merrill Weiss Group* at 5-7, 14-18 (May 17, 2000) ("Merrill Weiss Comments"); *Comments of Paxson Communications Corp.* (May 17, 2000) ("Paxson Comments"); *Comments of Pegasus Communications Corp.* at 6-11, 11-17 (May 17, 2000) ("Pegasus Comments"); *Comments of USA Broadcasting, Inc.* at 9-12 (May 17, 2000) ("USAB Comments"); *Comments of WRNN-TV* at 2-3 (May 17, 2000) ("WRNN Comments").

⁵⁷ Pegasus Comments at 9. Moreover, "[t]his is not an insignificant issue, as the transmitter site and tower form the single most important element of a station's conversion to digital broadcasting." *Id.*

problems that broadcasters are facing.⁵⁸ As Broadcasters stated in their initial comments, "[i]t is neither fair nor in furtherance of public policy to inject these new constraints at this stage of implementation."⁵⁹

Commenters in favor of a replication requirement contend that it would discourage spectrum warehousing⁶⁰ and speed service to the viewing public.⁶¹ The first concern, about spectrum warehousing, is not valid during the transition. As one commenter put it, stations have relied on "the Commission's pronouncements that it would allow them to start out small, with no time limits indicated."⁶² A station might well not replicate for some or all of the transition for cost reasons, but replicate once it is relieved of its analog service obligations. If, at the end of the transition, some stations decide not to serve their protected contours, the Commission should then take up the question of whether spectrum is going to waste. It is far too early, and would be irresponsible, to engage in that inquiry now.

The second concern, about speeding provision of DTV service simply is backward. There is considerable evidence that a new replication or principal community coverage requirement would slow, not quicken, the DTV transition. Stations "have undertaken detailed legal and engineering studies and made complex arrangements, including securing sites for new towers and space on existing towers, to determine the optimal transmission site for their

⁵⁸ See, e.g., NAB Comments at 4-10; APTS/PBS Comments at 27-29.

⁵⁹ Joint Broadcasters Comments at 6.

⁶⁰ See Fox Comments at 2; see also *Comments of the Association of Federal Communications Consulting Engineers* at 6 (May 17, 2000) (stating that requirement would further the goal of matching the Grade B service of paired NTSC stations) ("AFCCE Comments").

⁶¹ See CEA Comments at 27.

⁶² Merrill Weiss Comments at 7-8; see, e.g., Joint Broadcasters Comments at 7; Freedom Comments at 4; Pegasus Comments at 7-8; *Comments of Mike Simons* at 3-6 (May 17, 2000); USAB Comments at 11.

DTV facilities."⁶³ New requirements would serve only to undermine much of the work that has been performed to date. Furthermore, delays in obtaining local and governmental approvals⁶⁴ only will be exacerbated if stations have to re-plan, re-engineer, and rebuild because of new, unnecessary replication and principal community coverage requirements. New requirements could add to costs, thereby slowing or even thwarting the DTV transition.

One commenter in favor of a principal community coverage requirement contends that such a requirement would prevent stations that serve smaller areas from migrating toward more populous areas.⁶⁵ There is no evidence that stations are abandoning their communities of license, as this concern suggests, in pursuit of distant population centers.⁶⁶ But to the extent that broadcasters do adjust their facilities to provide service to more people, while continuing effectively to serve their "analog" communities, that should be encouraged. The reach of television service should not be expected to stagnate while populations shift and facilities change, provided that viewers are not disenfranchised. Imposing a replication requirement or principal community signal strength requirement in an effort to prevent station migration actually "could perpetuate the current coverage of broadcast television stations, with the inequities and service holes that currently exist."⁶⁷

⁶³ *Comments of Lenfest Broadcasting, LLC* at 4 (May 17, 2000) ("Lenfest Comments"); *see, e.g.*, *Freedom Comments* at 3-4; *Comments of Jovon Broadcasting Corp.* at 2-3 (May 17, 2000); *Merrill Weiss Comments* at 6-7; *Paxson Comments* at 7-8; *WRNN Comments* at 3.

⁶⁴ *See NAB Comments* at 4-10.

⁶⁵ *See Fox Comments* at 2-3.

⁶⁶ *See, e.g.*, *Paxson Comments* at 2; *Pegasus Comments* at 8-9.

⁶⁷ *APTS/PBS Comments* at 11; *see, e.g.*, *Freedom Comments* at 5-6; *Merrill Weiss Comments* at 17-18; *Paxson Comments* at 3-7 ("For three PCC stations, the proposed rule likely would reduce – not increase – reliable coverage for DTV viewers in the licensed community.").

A related community coverage proposal – to require a stronger digital signal to a station's community of license – is not only unnecessary and premature, but also unworkable. In the digital world, unlike the analog world, pictures 30 miles from a transmitter site will not be worse in quality than pictures 15 miles from a transmitter. The engineering premise underlying the analog rule simply does not apply in the digital world. Moreover, as Broadcasters and others noted, requiring a stronger principal community signal is incompatible with the technical assumptions underlying the DTV Table.⁶⁸ Requiring a technically unsound solution to solve a speculative problem is especially unnecessary when "[a]ll existing stations have significant incentives to ensure that the viewers most familiar with their analog programming retain quality access to the digital version of that programming."⁶⁹

B. It Is Too Early For The Commission To Mandate Channel Election.

Although all stations will have to elect their permanent channel well before the conclusion of the DTV transition, too many questions exist at this time about DTV frequency performance and build-out for the Commission to establish a channel election deadline or procedures. The few objections to postponing mandatory channel election focused on vacating reallocated spectrum⁷⁰ and allowing earlier identification of 175 additional channels in the core spectrum.⁷¹ Neither concern presents a compelling reason for the Commission to establish a channel election deadline now. As Broadcasters pointed out in their initial comments, broadcasters have a right (that serves the public interest) to continue to operate on reallocated

⁶⁸ See, e.g., Joint Broadcasters Comments at 8-9; AFCCE Comments at 7; Merrill Weiss Comments at 15-16; Pegasus Comments at 11-14.

⁶⁹ USAB Comments at 11.

⁷⁰ See, e.g., *Comments of National Public Radio, Inc.* at 3 (May 17, 2000).

spectrum until the end of the transition, even if it is auctioned sooner.⁷² This constraint on reallocated spectrum exists whether or not broadcasters have selected their post-transition DTV channels. Also, the Commission has decided that the Community Broadcasters Protection Act of 1999 does not require the identification of the 175 additional channels in the core spectrum; rather, it concluded that protection of those channels until the end of the transition already is provided for.⁷³

Compared to the minimal support for establishing a channel election deadline now, there was considerable support among commenters for postponing a decision until more is known. "Given the current state of the transition to DTV, it is unlikely that stations will have either enough data or enough DTV experience by May 1, 2004, the election date the Commission proposes, to make a meaningful and appropriate channel election."⁷⁴ There are considerable questions regarding performance on various channels, such as how low VHF channels will handle impulse noise and how DTV-to-DTV adjacencies will withstand interference, and there is very little actual experience that will help answer these questions.⁷⁵ Consequently, the Commission should wait at least until 2002 to adopt channel election rules.⁷⁶

(footnote cont'd)

⁷¹ See KM Comments at 5-6.

⁷² See Joint Broadcasters Comments at 4.

⁷³ See Joint Broadcasters Comments at 5 & n.9.

⁷⁴ APTS/PBS Comments at 17; see, e.g., COBi Comments at 2; *Comments of Cordillera Communications, Inc.* at 8 (May 17, 2000); Fox Comments at 5; Joint Broadcasters Comments at 3.

⁷⁵ See, e.g. APTS/PBS Comments at 17; COBi Comments at 2; Fox Comments at 5; Joint Broadcasters Comments at 3.

⁷⁶ See, e.g., APTS/PBS Comments at 18; Fox Comments at 5; Joint Broadcasters Comments at 4.

C. The Broadcast Industry Is Taking The Lead In Testing DTV Transmission And Receiver Performance.

Many commenters expressed opinions about the DTV transmission standard. Some supported the 8-VSB standard,⁷⁷ some supported the COFDM standard,⁷⁸ and others advocated further testing.⁷⁹ In the face of this debate and in order to assist the industry in making fully-informed technology choices, MSTV took the lead several months ago to organize a cross-section of broadcasters to get the facts on the relative performance of the 8-VSB standard and the COFDM technology, upcoming improvements to 8-VSB reception, and the suitability of both VSB and COFDM technologies to portable services. As described in Broadcasters' initial comments, in April, MSTV and NAB formed a group of broadcasters to undertake a six-month investigation and test program of DTV transmission and receiver performance.⁸⁰ Broadcasters will test and seek improvements in 8-VSB reception as well as test the applicability of COFDM systems in the United States. The group will release its findings as soon as they become available.

⁷⁷ See, e.g., *Comments of iBlast Networks* (May 17, 2000); *Comments of Motorola, Inc.* at 2-5 (May 17, 2000); *Comments of the National Consumers League* (May 17, 2000); *Comments of Zenith Electronics Corp.* (May 17, 2000).

⁷⁸ See, e.g., *Comments of Sinclair Broadcast Group, Inc.* (May 17, 2000); *Comments of Univision Communications Inc.* (May 17, 2000).

⁷⁹ See, e.g., APTS/PBS Comments at 13-15; Fox Comments at 16-17; *Comments of Microsoft Corp.* at 7 (May 17, 2000).

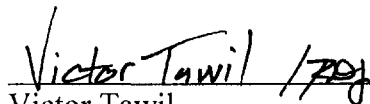
⁸⁰ See Joint Broadcasters Comments at 22.

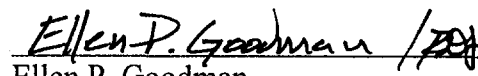
VI. CONCLUSION

The transition to DTV is well underway in some respects and has barely begun or is stalled in others. At this stage, the Commission should shepherd the transition by adopting a report and order consistent with the proposals in the initial Joint Broadcasters Comments as expanded on and explained in these reply comments. In some cases, the Commission should refrain from imposing unnecessary and burdensome regulation on broadcasters. In other cases, the Commission should take the lead in processing applications and spurring other industries to action that will foster DTV implementation and penetration.

Respectfully Submitted,

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